

Misbranding was alleged with respect to a portion of the article for the reason that the statements, to wit, "Salad Morehouse Mustard, Mustard Seed, Mustard Cake, Vinegar, Spices, Salt and Turmeric," "Prepared Old English Style Morehouse Mustard, Mustard Seed, Vinegar, Spices, Salt and Turmeric," "Prepared French Style Morehouse Mustard, Mustard Seed, Mustard Cake, Vinegar, Spices, Salt," borne on the respective labels, were false and misleading in that the said statements represented the article to be mustard, or prepared mustard, containing solely the declared ingredients, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was mustard, or prepared mustard, containing solely the declared ingredients, whereas it was not mustard, or prepared mustard containing solely the said named ingredients, in that it contained mustard bran. Misbranding was alleged with respect to the remainder of the product for the reason that the statement, to wit, "Salad Mustard," borne on the label, was false and misleading in that the said statement represented the article to be salad mustard containing solely the usual ingredients for prepared mustard, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was salad mustard containing solely the usual ingredients for prepared mustard, whereas it contained, among other ingredients, mustard bran. Misbranding was alleged with respect to all of the said article for the further reason that it was offered for sale under the distinctive name of another article.

On January 12, 1928, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$600.

W. M. JARDINE, *Secretary of Agriculture.*

15548. Adulteration and misbranding of prepared mustard. U. S. v Louis H. Morehouse (Morehouse & Co.). Tried to a jury. Verdict of guilty. Fine, \$400 and costs. (F. & D. No. 15052. I. S. No. 10125-t.)

On September 8, 1921, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Louis H. Morehouse, a member of a partnership trading as Morehouse & Co., Oakland, Calif., alleging shipment by said defendant, in violation of the food and drugs act, on or about July 21, 1920, from the State of California into the State of Washington, of a quantity of prepared mustard which was adulterated and misbranded. The article was shipped in barrels, labeled, in part: "Morehouse * * * Prepared Old English Mustard Colored with Turmeric. Emeryville, Cal."

Adulteration of the article was alleged in the information for the reason that a substance, to wit, mustard hulls, had been mixed and packed therewith so as to lower, reduce, and injuriously affect its quality and strength, and had been substituted in part for mustard, which the said article purported to be. Adulteration was alleged for the further reason that the article was a product inferior to mustard, to wit, a product composed in part of mustard hulls, and was colored with turmeric, so as to simulate the appearance of mustard and in a manner whereby its inferiority to mustard was concealed.

Misbranding was alleged for the reason that the statement "Mustard," borne on the barrels, was false and misleading in that the said statement represented that the article was composed wholly of mustard, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was composed wholly of mustard, whereas it was not so composed, but was composed in part of mustard hulls.

On January 10, 1928, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel the court charged the jury as follows (Kerrigan, D. J.):

"Gentlemen of the Jury: The information in this case, as you already know, is based upon what is called the Pure Food and Drug Act of June 30, 1906. You have already been made familiar with the contents of the information, and it will be unnecessary for me at this time even to state the substance of it. I might, however, in this connection, state that at the time of the arraignment the defendant pleaded not guilty, thus putting in issue all the material elements or allegations of the information, and casting upon the Government the duty of establishing its case against the defendants to a moral certainty and beyond a reasonable doubt. The information will be handed to you by the bailiff when you retire to deliberate upon your verdict.

"Under the Pure Food and Drug Act it is provided that any person who shall ship or deliver for shipment from any state or territory to any other state or territory, or foreign country, any article of food or drug so adulterated or misbranded within the meaning of this act shall be guilty of a misdemeanor, and the maximum punishment is a fine of \$200.

"For the purposes of this act, an article shall be deemed to be adulterated, in the case of food:

"(a) If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"(b) If any substance has been substituted wholly or in part for the article; if any valuable constituent of the article has been wholly or in part abstracted.

"The term 'misbranded' as used in this act shall apply to all articles of food or articles which enter into the composition of food, the package or label of which shall bear any design or device regarding such article, or ingredient, or substance contained therein, which is false or misleading in any particular.

"For the purpose of this act, an article shall be deemed to be misbranded in the case of food if it be an imitation of or offered for sale under the distinctive name of another article, if it be labeled or branded so as to deceive or mislead the purchaser.

"The Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of food and drugs manufactured or offered for sale in the United States. Regulations made by an executive department, in pursuance of authority delegated by Congress, shall have the force and effect of law.

"In prosecutions for adulterating and misbranding of food products shipped in interstate commerce under the Pure Food and Drug Act, the knowledge or intent of the shipper is not an element of the offense.

"If you find that the food products with which this case is concerned were adulterated or misbranded within the meaning of the Pure Food and Drug Act, and were shipped in interstate commerce by defendant, it is immaterial whether the defendant had knowledge that the particular food or drugs were adulterated or misbranded.

"When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, or agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the principal.

"A great deal of stress has been laid upon the age of the case. To my mind, and you are so instructed, that is immaterial to any issue that you are to pass upon in this case. You are to decide upon the evidence in this case whether the defendant is guilty or not guilty, whether the defense stated by him is genuine, or, as has been said, whether it is a fictitious defense. The age of the case, as I say, has no bearing upon any issue which is to be considered or passed upon by you. It may be true that on account of the long time that this case has been pending, that the facts may have grown dim in the memory of the witnesses; and, of course, in passing upon the question whether or not a witness has told the truth, you have a perfect right to consider the long time that this case has been pending.

"This being a criminal case, the defendant is presumed to be innocent. This presumption has the weight and effect of evidence. It may operate to acquit the defendant, and will operate to acquit the defendant unless it is overcome to your satisfaction to a moral certainty and beyond a reasonable doubt.

"A reasonable doubt means just what the term implies. It is a doubt based upon reason. It has been defined to be that state of the case which, after an entire comparison and consideration of all of the evidence in the case, leaves the minds of the jurors in that condition that they cannot say that they have an abiding conviction to a moral certainty of the truth of the charge."

The jury then retired and after due deliberation returned, on January 11, 1928, a verdict of guilty, and the court imposed a fine of \$400 and costs.

W. M. JARDINE, *Secretary of Agriculture.*